

The fabulous destiny of Dation in Payment

by Jessica Giraud

This year is the 40th anniversary of a procedure that was implemented by the law N°68-1251 of the 31st of December 1968 after André Malraux's suggestion when he was the French Culture Secretary of State. A dation in payment allows any taxpayer to give one thing in exchange for another thing which was due provided that the cultural interest of the accord thing is high enough to equate the taxpayer's debt. Though this procedure had a slow start, it has evolved and since its creation, it has kept on seducing taxpayers more and more.

Originally it only concerned movables qualified as works of art or movables that had a major historical or archeological interest except buildings. In 1996 an extension of the procedure applied to buildings. The new article 1716 from the CGI (General Tax Code) applies to any form of property whether it is movable or real estate to which the agreement committee gave an assessment for high historical or artistic value. Along the same lines, when it came to fiscal debts, the original law only concerned the right of inheritance. The aim was to encourage the extension of author's collections in state-owned museums en alleviating heritors from the cost of inheritance taxes. It amounted to giving a work of art in order to enjoy the possession of all the others. It is to be noticed that there is no objection or contradiction in giving some property which does not belong to the credit of the inheritance. There was a gradual extension of the dation in payment to the Tax on Wealth and since 2008 it has applied to free donations inter vivo and the taxes paid when property is shared out.

The procedure is simple and convenient. The taxpayer who wants to benefit from it contacts the public revenue department by filling an application form to which his income declaration is attached. Once a relevant committee has declared the work of art as genuine, its discharge value is estimated by the administration according to the current data of the French and international art market and of the cultural interest of the property. These data will enable the administration to avoid acquiring either the copycat of a work of art or a property that had been ill acquired on the one hand, on the other hand it guarantees a fair estimation of the transfer price.

Indeed, everything in this device has been set up not to frighten the taxpayer: the amount of the cession price is subject to his agreement "a dation in payment is perfect only when the estimated price corresponds to the accord and satisfaction of the debtor" With a view to achieving this, the administration will hire a committee of experts who will evaluate the object's worth and in case of disagreement, the taxpayer is always allowed to take out his bid and pay the amount of his tax in cash instead. In addition, there is no damage liable to revocation since the procedure of dation in payment annihilates interests linked to delay or default in payment of the tax – this rule is only fair if you take into account the period allotted to the finance general commission to give its final agreement decision, which takes 6 months to a year.

The law implies that the committee in charge of evaluating cession price of the work of art has to make a high estimation but this raises the issue of the value of contemporary works of art. Making living artists' works enter this domain may make these artists be part of a national heritage too early. This is the reason was the dation in payment procedure does not apply to "young artists" as a rule, it only applies to old works of arts which fame and quotation on the market of art enabled to reach an equilibrium price. On the contrary, by giving a recent work of art by the way of a dation in payment and allowing the state to valorize it could help to establish its price indirectly and thus anticipate the evolution of the market of art. For a start, the payment of an author or of his assignees that could be given as death duties might be liable to a false estimation. That is why, out of mere prudence, the committee avoids any form of speculation. For this purpose, the committee only deals with property which has been owned for at least five years before the proposition of dation in payment.

The aim of the state was to reduce the gap between the privately owned collections and the state owned collections and thus to avoid the scattering of inheritance by auction sales or exports. 40 years after its creation, this procedure turns out to be a marvelous way to enrich the national collections since it has enabled the creation of the Picasso Museum in Paris, the acquisition of a portrait of Diderot by Fragonard, that of *l' Origine du Monde* by Courbet, of the Treasure by Rethel, of some royal furniture, of the Wall of Objects by André Breton as well as the acquisition of works by Braque, Matisse, Bacon, Calder or Rothko. For the amateurs of art, the dation in payment is known as an agreed upon fiscal procedure which is efficient and which may turn out to be profitable. And in the case when the discharge value of a work of art is higher than the fiscal debt, if the state does not pay any compensation, sometimes museums pay extra money to the donator. This is worth noticing because it is exceptional.

Should we conclude by saying that taxpayers never had it so good when they pay their taxes?

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